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PENDAFTAR BESAR KELAHIRAN DAN KEMATIAN, MALAYSIA v. PANG WEE SEE & ANOR

COURT OF APPEAL, PUTRAJAYA
ABANG ISKANDAR JCA
ZAMANI A RAHIM JCA
B ZALEHA YUSOF JCA
[CIVIL APPEAL NO: B-01(A)-74-03-2016]
6 APRIL 2017

C ***CHILDREN AND YOUNG PERSONS:*** *Adoption – Citizenship – Whether adopted child should be registered as citizen of Malaysia – Acquisition of citizenship by operation of law – Whether requirements under art. 14, Part II Section (1) para (a) of the Second Schedule of the Federal Constitution fulfilled – Whether word 'parents' refers to legal and biological parents of child – Whether child must be born in Federation to biological parents one of whom was at time of birth either a citizen*
D *or a permanent resident in Federation – Concept of jus soli or jus sanguinis – Whether complied with – Whether an adoption order must have implication on citizenship of adopted child –Whether Adoption Act 1952 a competent legal instrument to confer citizenship status to adopted child*

E ***CHILDREN AND YOUNG PERSONS:*** *Adoption – Adoption order – Effect of – Whether adopted child should be registered as citizen of Malaysia – Whether adoption order has implication on citizenship of adopted child – Whether requirements under art. 14, Part II Section (1) para (a) of the Second Schedule of the Federal Constitution fulfilled – Concept of jus soli or jus sanguinis – Whether complied with – Whether Adoption Act 1952 a competent legal instrument to confer*
F *citizenship status to adopted child*

CONSTITUTIONAL LAW: *Citizenship – Operation of law, by – Adoption of child – Birth certificate issued stated child not a citizen of Malaysia – Application for judicial review – Whether adopted child should be registered as citizen of Malaysia – Acquisition of citizenship by operation of law – Whether requirements*
G *under art. 14, Part II Section (1) para (a) of the Second Schedule of the Federal Constitution fulfilled – Whether word 'parents' refers to legal and biological parents of child – Whether child must be born in Federation to biological parents one of whom was at time of birth either a citizen or permanent resident in Federation – Concept of jus soli or jus sanguinis – Whether an adoption order must have*
H *implication on citizenship of adopted child – Whether Adoption Act 1952 a competent legal instrument to confer citizenship status to adopted child*

In March 2001, the applicants/respondents were informed that there was a newborn baby ('the child') at Taj Hospital, Kuala Lumpur for adoption. The applicants decided to adopt the child and registered the birth of the child at
I the National Registration Department ('NRD') ('appellant') with the applicants' names as the biological parents of the child ('first birth

certificate.') In 2013, the second applicant together with the child went to NRD to apply for a MyKad for the child. The second applicant disclosed to the NRD officer that the child was not formally adopted and the officer explained the necessary steps needed to be taken for the child to be formally adopted, including amending certain particulars of the first birth certificate. Subsequently, the NRD issued the child's birth certificate ('second birth certificate') which recorded the following information (a) the child's biological parents were recorded as 'information not available' and (b) the child was registered as having been born on 8 March 2001 in Taj Hospital. The applicants then made an application to the High Court to adopt the child which was later duly granted. Based on the court order, the applicants applied to the NRD for a new birth certificate pursuant to s. 25 of the Adoption Act 1952 ('Adoption Act'). The NRD issued a new birth certificate for the child ('current birth certificate') which registered the child as not a citizen of Malaysia. The NRD office informed the applicants that the NRD would not register the child as a citizen of Malaysia based on the adoption order because the NRD had no data on the biological parents of the child. The child was hence rendered stateless. Subsequently, the applicants filed an application for leave for judicial review ('JR') to quash the said decision on the citizenship matter of the child. The High Court Judge allowed the applicants' application for JR based on the provisions of ss. 9 and 25A of the Adoption Act 1952 as it was his considered view that the adoption certificate issued to the child had changed his status with regard to his citizenship status. Thus, the appeal to this court by the appellant. The issues that arose were (i) whether there was a failure to fulfil the requirements under art. 14, Part II, s. (1) para (a) of the Second Schedule of the Federal Constitution; (ii) whether the identity and whereabouts of the biological parents of the child ought to be taken into consideration; and (iii) the issue of the effect of an adoption order issued under the Adoption Act on the granting of a citizenship on an adopted child.

Held (allowing appeal)
Per Abang Iskandar JCA delivering the judgment of the court:

(1) In determining citizenship of a person, two concepts are commonly applied, namely the concept of *jus soli* ('right of the soil' which is right of anyone born in the territory of a State to nationality or citizenship) and *jus sanguinis* (right of blood which citizenship is not determined by place of birth but by having one or both parents who are citizens of the State). Article 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution is a provision which is anchored on the elements of both the concepts of *jus soli* and *jus sanguinis* whereby citizenship of a person is traceable to the place of birth, namely Malaysia, as well as Malaysia citizenship of one of the person's parents (right of blood) at the time of the person's birth in order to be a Malaysian citizen by operation of law, under art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution. (para 29)

(2) If the word 'parent' as appears in art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution was intended to include an adoptive parent in the Adoption Act, as opposed to a biological parent, such intention would have been expressly provided for in the provisions on interpretations in the Federal Constitution itself. Any submission to the effect that the Adoption Act provides a perceived link in the meaning of parents in art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution was seriously flawed. (para 22)

(3) The rights conferred on the adoptive parents operate only upon the granting of the adoption order. It does not operate retrospectively so as to obliterate what had been done in relation to the child before his adoption. The adoptive parents only come into the shoes of the biological parents upon the issuance of the adoption order; at which time, the rights of the biological parents, *in futuro*, over the child are, in law, extinguished. The presumed legitimacy must be understood in the context of what was intended in the scheme of things as contained in s. 9(1) of the Adoption Act which was, among others, to render the adopted child to be on equal footing with his other adoptive siblings, if any. In light of that, the adoptive parents could never fulfil the critical ingredient in the Federal Constitution that requires a person to prove that his 'parents one at least is at the time of the birth either a citizen or permanently resident in the Federation', namely that of biological parents. That was because it was a factual impossibility, as any adoption comes only after the birth, not at the time of the birth. (para 33)

(4) As regards s. 25A of the Adoption Act, sub-ss. (5) and (6) which were specifically drafted to cater for the lawful adoption of children, made no mention to the issue pertaining to the citizenship status of the adopted child. The effect to be given to those mentioned provisions must be confined to the ambit of its operability. They were not intended to extend into the realm of the Federal Constitution in matters pertaining to citizenship. Further, s. 9 of the Adoption Act does not say anything pertaining to the citizenship status of the adopted child, upon adoption having been duly approved. The omission to refer to citizenship under s. 9 of the Adoption Act was a deliberate one. The provisions on citizenship reside under the Federal Constitution and they represent the accepted regime on citizenship and how it is and/or could be obtained. If the Federal Constitution intended that an adopted child to a non-Malaysian citizen or a permanent resident of Malaysia, be conferred as a Malaysian citizen upon successful adoption, such provision would have been expressly stipulated in the Federal Constitution itself. The Adoption Act, being a subsidiary legislation *qua* the Federal

Constitution, could not be interpreted in such a way as to augment what appeared to be a perceived *lacuna* in the Federal Constitution. (paras 35 & 36)

(5) Article 4(1) of the Federal Constitution expressly declares that any provision in any statute that is inconsistent with the Federal Constitution shall, to the extent of its inconsistency, be void and be of no effect. Thus, the Adoption Act was not competent as a legal instrument to confer citizenship status to an adopted child under art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of Federal Constitution. An adoption order issued under the Adoption Act does not confer Malaysian citizenship to an adopted child although one of his adoptive parents is a Malaysian citizen or a person permanently resident in Malaysia by operation of law, within the contemplation and ambit of art. 14(1)(b) read with s. (1)(a) Part II Second Schedule of the Federal Constitution. To be a Malaysian citizen by operation of law under the provisions of art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution, the person must be born in Malaysia and one of his biological parents is at the time of his birth, either a Malaysian citizen or a person who is permanently resident in Malaysia. Herein, the applicants did not fulfil the crucial biological or the *jus sanguinis* criterion as envisaged under the said article. (paras 38-40)

Bahasa Malaysia *Headnotes*

Pada Mac 2001, pemohon/responden dimaklumkan bahawa terdapat bayi yang baru dilahirkan ('kanak-kanak tersebut') di Taj Hospital, Kuala Lumpur untuk diambil sebagai anak angkat. Pemohon-pemohon memutuskan untuk mengambil kanak-kanak itu sebagai anak angkat dan mendaftarkan kelahirannya di Jabatan Pendaftaran Negara ('JPN') ('perayu') dengan nama pemohon-pemohon sebagai ibu bapa kandung kanak-kanak tersebut ('sijil kelahiran pertama.') Pada tahun 2013, pemohon kedua bersama-sama dengan kanak-kanak itu telah ke JPN untuk memohon MyKad untuk kanak-kanak tersebut. Pemohon kedua memberitahu pegawai JPN bahawa kanak-kanak tersebut tidak diambil sebagai anak angkat secara rasmi dan pegawai itu menjelaskan langkah-langkah yang perlu diambil supaya kanak-kanak tersebut diambil sebagai anak angkat secara rasmi, termasuk meminda butir-butir tertentu dalam sijil kelahiran pertama. Seterusnya, JPN mengeluarkan sijil kelahiran kanak-kanak tersebut ('sijil kelahiran kedua') yang merekodkan maklumat berikut (a) ibu bapa kandung kanak-kanak tersebut direkodkan sebagai 'maklumat tidak diperolehi'; dan (b) kanak-kanak tersebut didaftarkan lahir pada 8 Mac 2001 di Hospital Taj. Pemohon-pemohon kemudiannya membuat permohonan di Mahkamah Tinggi untuk mengambil kanak-kanak itu sebagai anak angkat yang kemudiannya, dibenarkan. Berdasarkan perintah mahkamah itu, pemohon-pemohon memohon pada JPN untuk sijil kelahiran baru bawah s. 25 Akta

Pengangkatan 1952 ('Akta Pengangkatan'). JPN mengeluarkan sijil kelahiran baru untuk kanak-kanak tersebut ('sijil kelahiran semasa') yang mendaftarkan kanak-kanak itu sebagai bukan warganegara Malaysia. Pejabat JPN memaklumkan pemohon-pemohon bahawa JPN tidak dapat mendaftarkan kanak-kanak itu sebagai warganegara Malaysia berdasarkan perintah pengangkatan kerana JPN tidak mempunyai data berkenaan ibu bapa kandung kanak-kanak itu. Kanak-kanak itu dinyatakan sebagai bukan warganegara. Berikutan itu, pemohon-pemohon memfailkan permohonan semakan kehakiman ('SK') bagi membatalkan keputusan tersebut berkenaan kewarganegaraan kanak-kanak itu. Hakim Mahkamah Tinggi membenarkan permohonan pemohon-pemohon untuk SK berdasarkan peruntukan-peruntukan ss. 9 dan 25A Akta Pengangkatan 1952 kerana beliau berpendapat bahawa sijil pengangkatan yang dikeluarkan pada kanak-kanak itu telah menukarkan status kewarganegaraannya. Oleh itu, rayuan ke mahkamah ini oleh perayu-perayu. Isu-isu yang timbul adalah (i) sama ada terdapat kegagalan mematuhi keperluan per. 14, Bahagian II, s. (1) perenggan (a) Jadual Kedua Perlembagaan Persekutuan; (ii) sama ada identiti dan persoalan di manakah ibu bapa kandung kanak-kanak itu harus diambil kira; dan (iii) isu kesan perintah pengangkatan bawah Akta Pengangkatan berkenaan kewarganegaraan anak angkat.

Diputuskan (membenarkan rayuan)
Oleh Abang Iskandar HMR menyampaikan penghakiman mahkamah:

(1) Dalam menentukan kewarganegaraan seseorang, dua konsep diguna pakai, iaitu konsep *jus soli* ('right of the soil' iaitu hak seseorang yang dilahirkan dalam wilayah sebuah Negeri bagi kerakyatan atau kewarganegaraan) dan *jus sanguinis* ('right of blood' di mana kewarganegaraan tidak ditentukan oleh tempat kelahiran tetapi dengan mempunyai satu atau kedua-dua ibu bapa sebagai warganegara Negeri). Perkara 14(1)(b) dibaca bersama dengan s. 1(a) Bahagian II, Jadual Kedua Perlembagaan Persekutuan adalah peruntukan yang terangkum dalam elemen-elemen konsep *jus soli* dan *jus sanguinis* di mana kewarganegaraan seseorang dapat dikesan pada tempat kelahiran, iaitu Malaysia, dan juga kewarganegaraan Malaysia salah seorang ibu bapa kandung (right of blood) pada waktu kelahiran seseorang untuk dijadikan warganegara Malaysia melalui undang-undang di bawah per. 14(1)(b) dibaca dengan s. 1(a) Bahagian II Jadual Kedua Perlembagaan Persekutuan.

(2) Jika perkataan 'ibu bapa' dalam per. 14(1)(b) dibaca dengan s. 1(a) Bahagian II Jadual Kedua Perlembagaan Persekutuan berniat untuk memasukkan ibu bapa angkat dalam Akta Pengangkatan, berbanding dengan ibu bapa kandung, niat itu akan diperuntukkan dengan nyata dalam peruntukan tafsiran Perlembagaan Persekutuan. Apa-apa hujahan

yang membawa kesan Akta Pengangkatan menyediakan satu pelengkap hilang tanggapan yang boleh diterima dalam pengertian ibu bapa dalam per. 14(1)(b) dibaca dengan s. 1(a) Bahagian II Jadual Kedua Perlembagaan Persekutuan adalah cacat.

(3) Hak-hak yang diberikan kepada ibu bapa angkat beroperasi hanya atas pemberian perintah pengangkatan. Ia tidak beroperasi secara retrospektif supaya dapat memupuskan apa yang telah berlaku berhubungan kanak-kanak itu sebelum pengangkatannya. Ibu bapa angkat hanya akan menggantikan tempat ibu bapa kandung apabila perintah pengangkatan dikeluarkan; dan pada masa itu, hak-hak ibu bapa kandung, *in futuro*, ke atas kanak-kanak itu dibatalkan dari segi undang-undang. Legitimasi yang dianggap harus difahamkan dalam konteks apa yang diniatkan dalam rancangan keseluruhannya seperti yang terkandung dalam s. 9(1) Akta Pengangkatan yang, antara lain, menjadikan anak angkat dalam kedudukan seimbang dengan adik-beradik angkat yang lain, jika ada. Memandangkan itu, ibu bapa kandung tidak boleh memenuhi keperluan kritikal dalam Perlembagaan Persekutuan yang memerlukan seseorang membuktikan bahawa 'salah satu ibu bapanya pada waktu kelahiran adalah warganegara atau pemastautin tetap Persekutuan' iaitu ibu bapa kandung. Itu adalah satu kemustahilan, kerana pengangkatan hanya berlaku selepas kelahiran, dan bukan pada waktu kelahiran.

(4) Berkenaan s. 25A Akta Pengangkatan, sub-s. (5) dan (6) yang digubal khususnya untuk menampung pengangkatan sah kanak-kanak, tidak menyebut isu berhubungan status kewarganegaraan anak angkat. Kesan yang perlu diberi pada peruntukan-peruntukan yang disebut harus terhad pada lingkungan kebolehkendalian. Ia tidak bertujuan untuk dilanjutkan ke Perlembagaan Persekutuan dalam perkara berkaitan kewarganegaraan. Seterusnya, s. 9 Akta Pengangkatan tidak menyentuh status kewarganegaraan seorang anak angkat, apabila pengangkatan diluluskan. Peninggalan merujuk pada kewarganegaraan bawah s. 9 Akta Pengangkatan adalah disengajakan. Peruntukan-peruntukan kewarganegaraan terdapat dalam Perlembagaan Persekutuan dan ia mewakili rejim yang diterima mengenai kewarganegaraan dan bagaimana ia boleh diperolehi. Jika Perlembagaan Persekutuan berniat untuk seorang anak angkat pada seorang yang bukan warganegara Malaysia atau pemastautin tetap Malaysia, disahkan sebagai warganegara Malaysia apabila pengangkatan berjaya, peruntukan sebegitu akan dengan jelasnya dinyatakan dalam Perlembagaan Persekutuan. Akta Pengangkatan, sebagai perundangan subsidiari *qua* Perlembagaan Persekutuan, tidak boleh ditafsirkan dalam apa-apa cara untuk menokok tambah apa yang dilihat sebagai satu *lacuna* dalam Perlembagaan Persekutuan.

(5) Perkara 4(1) Perlembagaan Persekutuan dengan jelasnya menyatakan

bahawa apa-apa peruntukan dalam mana-mana statut yang tidak selaras dengan Perlembagaan Persekutuan akan, setakat ketidakselarasan itu, menjadi tidak sah dan terbatal. Oleh itu, Akta Pengangkatan tidak kompeten sebagai instrumen undang-undang untuk memberikan taraf kewarganegaraan ke atas seorang anak angkat bawah per. 14(1)(b) dibaca dengan s. (1)(a) Bahagian II Jadual Kedua Perlembagaan Persekutuan. Satu perintah pengangkatan yang dikeluarkan bawah Akta Pengangkatan tidak memberikan kewarganegaraan Malaysia kepada anak angkat walaupun salah seorang daripada ibu atau bapa angkatnya adalah warganegara Malaysia atau pemastautin tetap Malaysia melalui undang-undang, dalam renungan dan lingkungan per. 14(1)(b) dibaca bersama s. (1)(a) Bahagian II Jadual Kedua Perlembagaan Persekutuan. Untuk menjadi warganegara Malaysia melalui operasi undang-undang bawah peruntukan per. 14(1)(b) dibaca dengan s. (1)(a) Bahagian II Jadual Kedua Perlembagaan Persekutuan, seseorang itu harus dilahirkan di Malaysia dan salah seorang ibu atau bapa kandungnya pada waktu kelahirannya, adalah warganegara Malaysia atau pemastautin tetap Malaysia. Oleh itu, pemohon-pemohon tidak memenuhi keperluan penting biologikal atau *jus sanguinis* seperti yang dibayangkan bawah perkara tersebut.

Case(s) referred to:

Chin Kooi Nah (Suing By Herself And As Next Of Kin To Chin Jia Nee, An Infant) v. Pendaftar Besar Kelahiran Dan Kematian, Malaysia [2016] 1 CLJ 736 HC ***(refd)***

Loh Kooi Choon v. Government of Malaysia [1975] 1 LNS 90 FC ***(refd)***

Malaysia Land Properties Sdn Bhd v. Waldorf & Windsor Joint Management Body [2014] 6 CLJ 821 CA ***(refd)***

Robin Tan Pang Heng v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor [2010] 9 CLJ 505 FC ***(refd)***

Legislation referred to:

Adoption Act 1952, ss. 3(1), 9(1), (2), 25, 25A(5), (6)

Federal Constitution, arts. 4(1), 14(1)(b), 15A, Second Schedule Part II ss. 1(a), (e), 2(1)

Adoption of Children Act (Cap 4) [Sing], s. 7(9)

For the appellant - Maisarah Juhari; SFC

For the respondents - Raymond Mah Mun Kitt, Liow Pei Xia & John Chan Chia Yoong; M/s Mah Weng Kwai & Assocs

[Editor's note: For the High Court judgment, please see Pang Wee See & Satu Lagi lwn. Pendaftar Besar Kelahiran Dan Kematian, Malaysia [2016] 1 LNS 1086 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Abang Iskandar JCA:

Brief Facts Of The Case

[1] In March 2001, Pang Wee See and Yee Oii Pah ("the applicants") were informed by a relative that there was a newborn baby ("the child") at Taj Hospital, Jalan Ipoh, Kuala Lumpur for adoption. The applicants decided to adopt the child as they did not have any children of their own.

[2] On 23 March 2001, the applicants registered the birth of the child at National Registration Department ("NRD") with the applicants' names as the biological parents of the child ("first birth certificate").

[3] On 29 August 2013, the second applicant (Yee Oii Pah) together with the child went to NRD to apply for a MyKad for the child. The second applicant was interviewed by Encik Mohd Afizul bin Yajid, an officer from the NRD, in respect of the accuracy of the applicants' names on the child's first birth certificate. The second applicant disclosed to Encik Mohd Afizul that the child was not formally adopted. Encik Mohd Afizul explained the necessary steps needed to be taken for the child to be formally adopted, including amending certain particulars of the first birth certificate.

[4] On 23 January 2014, the NRD reissued the child's birth certificate ("second birth certificate") which recorded the following information:

(a) The child's biological parents are recorded as "information not available";

(b) The child is registered as having been born on 8 March 2001 in Taj Hospital Jalan Ipoh, Kuala Lumpur.

[5] The applicants then made an application to the Kuala Lumpur High Court *vide* an originating summons dated 25 February 2014 to adopt the child which was later duly granted by the High Court on 19 September 2014. In the order, the High Court had confirmed that the child was born in Malaysia on 8 March 2001 at Taj Hospital, Jalan Ipoh, Kuala Lumpur. Based on the court order, the applicants applied to the NRD for a new birth certificate pursuant to s. 25 of the Adoption Act 1952.

[6] On 13 February 2015, the NRD issued a new birth certificate for the child ("current birth certificate"). However, the current birth certificate registered the child as not a citizen of Malaysia.

[7] Upon enquiry by the applicants on the issue of citizenship of the child, NRD office informed the applicants that the NRD would not register the child as a citizen of Malaysia based on the adoption order because the NRD had no data on the biological parents of the child. The child was hence rendered stateless.

[8] Subsequently, on 8 April 2015, the applicants filed an application for leave for judicial review ("JR") to quash the decision of the appellant on the citizenship matter of the child. They had also prayed for an order of *mandamus* to compel that appellant to register the child as a citizen of Malaysia. The leave was granted on 9 July 2015.

[9] The applicants then filed the application for JR which prayed for the following reliefs:

(a) A declaration that PCC a child, is a citizen of Malaysia by operation of law by virtue of his birth within the Federation of Malaysia pursuant to art. 14(1)(b), Part II s. (1) para. (e) and s. (2) of the Second Schedule of the Federal Constitution.

(b) A declaration the child is a citizen of Malaysia by operation of law by virtue of his lawful adoption by the applicants pursuant to the order for adoption dated 19 September 2014 made by the Kuala Lumpur High Court in Adoption No: 34-3-02-2014 read with ss. 9 and 25A of the Adoption Act 1952 and art. 14(1)(b) and Part II s. (1) para. (a) of the Second Schedule of the Federal Constitution;

(c) An order of *certiorari* to quash the decision of the appellant on 13 February 2015 to issue the birth certificate of the child (Series No 000957 XA) dated 27 February 2014 and signed by the appellant which registered the child as a non-citizen and not a citizen of Malaysia;

(d) An order of *mandamus* directing the appellant to reissue the birth certificate of the child to register the child as a citizen of Malaysia;

(e) Costs; and

(f) Such further orders and/or directions as may be given or made as this Honourable Court deemed fit and just in the circumstances.

[10] On 1 March 2016, the learned High Court Judge allowed the applicants' application for JR. The learned High Court Judge had allowed the JR based on the provisions of s. 9 and s. 25A of the Adoption Act 1952. It was his considered view that the adoption certificate issued to the child had changed his status with regard to his citizenship status. He had also referred to two unreported cases of *Lee Chin Pon & Anor v. Registrar-General of Births and Deaths Malaysia* [2010] and the case of *Leong Peng Kheong & Anor v. Registrar-General of Births and Deaths Malaysia* (Application for Judicial Review No: 25-102-05-2014) to premise his decision upon. Essentially, both cases had decided that an adoption order had the effect of granting citizenship to an adopted child whose biological parents could not be traced and whose citizenship could not be ascertained as being Malaysian citizen[s]. He therefore, had allowed prayers 1, 2, 3 and 4 of the respondents' application for JR. Thus the appeal to this court by the Pendaftar Besar Kelahiran dan Kematian, Malaysia.

The Appeal

[11] We heard the appeal on two occasions ie, on 23 November 2016 and 3 January 2017. We indicated to parties that we required a bit of time to deliberate on the submissions in light of the cause papers in the record of appeal and that we would inform them of our decision at a date to be fixed. We now deliver our decision and our reasons for having so decided.

[12] Before us, the Senior Federal Counsel ("SFC") for NRD raised two main issues. Firstly:

(a) The learned High Court Judge has erred in laws and in facts in making a finding that the applicants have fulfilled the requirement under art. 14 of Federal Constitution and s. 1(a) of Part II Second Schedule of the Federal Constitution;

(b) The learned High Court Judge was wrong in law and facts in failing to take into account that the biological parents of the said child are untraceable up to this date;

(c) The learned High Court Judge had erred in law and facts when the High Court made a finding that the Adoption Act 1952 is relevant and is taken into consideration in determining the citizenship status of the said child.

[13] The second issue raised by the NRD being the appellant in this appeal is encapsulated like the following:

(a) The learned High Court Judge was wrong in law and facts when he failed to take into account the requirement provided under art. 14 of Federal Constitution and s. 2(1) of Part II Second Schedule of Federal Constitution in determining the citizenship status of the child; and

(b) The learned High Court Judge had erred in law and facts in failing to take into account that the applicants had failed to fulfil the requirement in order to obtain citizenship by operation of law under art. 14 of the Federal Constitution in totality.

Preliminary Objections By The Respondents

[14] The preliminary objection was premised on the pleading point. He had quoted the decision of this court of *Malaysia Land Properties Sdn Bhd v. Waldorf & Windsor Joint Management Body* [2014] 6 CLJ 821; [2014] 3 MLJ 467 ("*Malaysia Land Properties'* case") as follows:

> [33] The appellant did not include the lack of *locus* as a ground in its memorandum of appeal and neither did it apply to amend the memorandum of appeal to do so. There is a plethora of weighty decisions that an appeal court will not allow an appellant to argue a ground that has not been pleaded in its memorandum of appeal as a matter of essential justice …

[15] Having considered the submissions on this preliminary objection, we had sustained it. The learned SFC submitted before us that since the appellant had stated that it was appealing against the whole decision, it must be interpreted that the whole decision of the learned trial judge was at large and was subject to curial scrutiny. Granted it was so stated, we were of the considered view that such intention was somehow caveated by what was actually pleaded in the memorandum of appeal ("MOA").

[16] We took the view as stipulated in the *Malaysia Land Properties* case. On top of that, the appellant did not seek to amend the MOA to evince its intention of appealing against the other order of the learned High Court Judge, which the learned SFC admitted before us, had been omitted and was conspicuously missing in the MOA that was filed with the court.

[17] Premised on the above, we agreed with the respondents that the appellant was bound by its own pleadings. We, therefore, allowed the objection by learned counsel for the respondents.

[18] As a consequence thereof, the appellant was allowed to prosecute this appeal based on what were pleaded in the MOA, which essentially could be summarised as follows, namely:

(a) The respondents failed to fulfil the requirements under art. 14, Part II, s. 1, para. (a) of the Second Schedule of the Federal Constitution;

(b) The identity and whereabouts of the biological parents of the child ought to be taken into consideration; and

(c) The Adoption Act 1952 is not relevant in determining the child's citizenship.

[19] That being the case, this appeal was mainly concerned with the issue of the effect of an adoption order issued under the Adoption Act 1952 on the granting of citizenship on an adopted child, or the child as in this appeal.

[20] Postulated in another way, as was properly framed for our consideration by the respondents namely, whether the Adoption Act 1952 was relevant in determining the citizenship of the child.

[21] We must state here that the law on citizenship is contained, both procedurally and substantively in the Federal Constitution itself. There is no statute that was specially legislated to house the specific provision pertaining to citizenship. Rather, these provisions reside in the Federal Constitution. We noted too, that these provisions make no reference to other specific statutes, especially in aid of its interpretation. In fact, the Federal Constitution itself provides for the interpretation required in order to make clear what the words in the citizenship provisions are supposed to mean. In other words, the citizenship provisions in the Federal Constitution are exclusively housed in the Federal Constitution itself. The Federal

Constitution, like most other written Constitutions, is interpreted not in the like manner in which other statutes are normally interpreted. In relation to the Federal Constitution, all other statutes are subsidiary legislations. Thus, the constitutionality of the Federal Constitution is considered from the perspective of the Constitution itself. It is not to be interpreted by reference to other statutes, *albeit* they were passed by Parliament.

[22] In the context of this case, we are of the view, with respect, that if the word 'parent' as appears in art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution was intended to include an adoptive parent in the Adoption Act 1952, as opposed to a biological parent, such intention would have been expressly provided for in the provisions on interpretations in the Federal Constitution itself. Any submission to the effect that the Adoption Act 1952 provides a perceived missing link in the meaning of parents in art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution, to our respectful view, is seriously flawed.

[23] It was submitted by learned counsel for the respondents that cl. (5) to s. 25A of the Adoption Act 1952 makes reference to the fact that it was good for all purposes and that as such, it must necessarily follow that it was therefore good for citizenship purposes as well. It was also submitted that there was no express exclusion of the operation of the Adoption Act 1952 pertaining to citizenship matters. The Singapore Adoption of Children Act was cited wherein a reference to the effect that "an adoption order shall not by itself affect the citizenship of the adopted child" as stipulated under s. 7(9) of the said Act. As such, it was submitted that a similar provision must exist in our Adoption Act 1952 in order to say it had no application to citizenship. But neither are we able to see any express provision to the effect that s. 25A of the Adoption Act 1952 is meant to affect citizenship matters. So its silence, at its highest, must mean that it is neutral, in light of the unique position of citizenship matters as contained in the Federal Constitution. Any intention to expand its reach must be stipulated expressly in the Federal Constitution itself, not by way of a vague and stretched inference, and residing in other extraneous legislation, such as the Adoption Act 1952.

[24] The learned SFC had submitted before us that the issue on the effect of the Adoption Act 1952 on citizenship by operation of law had been decided by a previous panel of this court in the case of *Chin Kooi Nah (Suing By Herself And As Next Of Kin To Chin Jia Nee, An Infant) v. Pendaftar Besar Kelahiran Dan Kematian, Malaysia* [2016] 1 CLJ 736; [2016] 7 MLJ 717 ("the *CKN's* case"). The facts obtaining in that *CKN's* case *(supra)* were almost similar to our present case and the bone of contention in that case was premised along the same line in that it was submitted by counsel for CKN that the certificate of birth issued under the Adoption Act 1952 (as was issued to the adopted child in our instant case) ought to be taken into account in determining the citizenship of the adopted child, CJN. The particulars stating

A the citizenship of the adoptive parents, as stated in the said certificate, as submitted by counsel, are conclusive as provided for under s. 25A of the Adoption Act 1952. In this regard, sub-ss. (5) and (6) of s. 25A of the said Act were relied upon to anchor such proposition by learned counsel.

B **[25]** We now reproduce the headnotes of the *CKN's* case *(supra)* from the said report at p. 717 (MLJ) which had encapsulated the issues that were before the learned Judicial Commissioner ("JC"), as follows:

> The question before the High Court in the instant matter was whether an adoption order entitled an adopted child to be registered as a Malaysian citizen as of right and/or by operation of law pursuant to art
C 14(1)(b) of the Federal Constitution. The applicant herein had obtained an adoption order from the session court to adopt a female child who was born in Malaysia but was abandoned by her biological parents. The child's birth certificate noted that information about her biological parents could not be obtained. The respondent, on being ordered by the court to register the adoption order, issued a new birth certificate for the child that
D classified her as 'non-citizen' even though the applicant was registered and named as her mother. The respondent rejected the applicant's application to register the child as a Malaysian citizen and advised her to make a formal application for such citizenship. In filing the instant application to review the respondent's said decision, the applicant relied upon the adoption order and ss. 9 and 25A of the Adoption Act 1952 to
E contend that as she was a Malaysian citizen, the child ought also to be registered as one as the effect of the adoption order was to deem the child as having been born to her in lawful wedlock. The applicant argued that if the respondent did not register the child as a Malaysian citizen the child would be rendered stateless and that fact might adversely affect the child
F psychologically. The applicant further contended that as the child was born in Malaysia she was a citizen of the country by operation of law under art. 14(1)(b) read with Part II of the Second Schedule of the Federal Constitution. The respondent, on the other hand, argued that the applicant failed to produce any evidence about the whereabouts of the child's biological parents as a joint reading of art. 14(1)(b), s. 1(a) of Part
G II of the Second Schedule and s. 17 Part III of the Second Schedule of the Federal Constitution required it to be shown that those parents were not only legally married but that at least one of them was a citizen of, or permanently resident in, the Federation at the time of the child's birth. The respondent contended that unlike in some jurisdictions where legislation expressly dealt with an adopted child's right to acquire
H citizenship, adoption in Malaysia did not automatically confer on the child a right to citizenship by operation of law. The respondent also submitted that as the applicant had not exhausted all alternative remedies, such as applying for the child's citizenship by way of registration under art. 15A of the Federal Constitution before seeking relief from the court, her application was premature and ought to be dismissed.

I

[26] The learned JC who heard the matter in the High Court sitting in Penang had dismissed the application for JR by CKN that attempted to quash the decision of the *Pendaftar Besar Kelahiran dan Kematian, Malaysia* ("PBKK") who had stated the citizenship of CJN in the birth certificate as 'a non-citizen', as her biological parents' citizenship could not be determined, although CJN was born in Malaysia. The aggrieved applicant had then appealed to the Court of Appeal where the same argument pertaining to the effect of the adoption order issued under s. 3(1) of the Adoption Act 1952 was ventilated before the learned appeal justices in due course. Having considered the arguments, the learned appeal justices dismissed the said appeal and affirmed the decision of the learned JC.

[27] Reverting back to our instant appeal, learned counsel for the respondents, Mr Raymond Mah, had strenuously argued, in defending the learned High Court Judge's decision which was in his client's favour, and sought to convince us that what was required under the art. 14(1)(b) of the Federal Constitution had been fulfilled by the provisions as contained under s. 25A of the Adoption Act, in particular sub-ss. (5) and (6) of the s. 25A.

[28] Article 14(1)(b) of the Federal Constitution states as follows:

> 1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Merdeka Day are citizens by operation of law, that is to say: (a) every person born within the Federation of whose parents one at least is at the time of birth either a citizen or permanently resident in the Federation: and …

[29] In determining citizenship of a person, two concepts are commonly applied, namely the concept of *jus soli* and the concept of *jus sanguinis*. *Jus soli* which means 'right of the soil', and commonly referred to as birthright citizenship, is the right of anyone born in the territory of a State to nationality or citizenship. The determining factor being the place or territory where a person was born. In the case of *jus sanguinis,* which in Latin means 'right of blood', is a principle of nationality law by which citizenship is not determined by place of birth but by having one or both parents who are citizens of the State. Viewed from the context of these two concepts, we are of the considered opinion that art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution is a provision which is anchored on the elements of both the concepts of *jus sanguinis* and of *jus soli*, whereby citizenship of a person is traceable to the place of birth namely, Malaysia, as well as Malaysian citizenship of one of the person's parents [the right of blood] at the time of the person's birth, in order to be a Malaysian citizen by operation of law, under art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution.

[30] Learned counsel Mr Mah had submitted before us that the combined effect of sub-ss. (5) and (6) to s. 25A of the Adoption Act 1952 had enabled the applicants to fulfil all the essential legal requirement needed to be fulfilled by a person seeking citizenship by operation of law, as envisaged

under the said art. 14 of the Federal Constitution. Section 9 of the Adoption Act was also referred to and relied upon in support of the proposition that by virtue of the adoption order issued to the child PCC in particular sub-s. (1) and (2) therein.

[31] What had become clear to us had been that one of the key ingredients stipulated in art. 14(1)(b) read together with s. 1(a) of Part II of the Second Schedule of the Federal Constitution, is that the person seeking to be a citizen of Malaysia *via* this specific constitutional provision must show proof that when he was born in this country, one of his parents must either be a citizen of Malaysia or was permanently resident in this country. The phrase that is employed under that provision reads, "is at the time of the birth". To our minds, that phrase has categorically made a reference to the biological parent of the person, who must either be a Malaysian citizen or a person who is permanently resident in Malaysia. By virtue of this phrase, any person intending to claim citizenship by operation of law under the abovestated constitutional provision, it is not sufficient that he or she was born in Malaysia. He must be a person, whose either parent was a Malaysian citizen or a Malaysian permanent resident, when he was born in Malaysia. That provision does not contain any reference to an adoptive parent, *albeit* a Malaysian adoptive parent.

[32] We must now reproduce the provisions in the Adoption Act 1952 which were argued rather forcefully by Mr Raymond Mah, namely s. 9(1) and (2) and s. 25A(5) and (6) therein.

> Section 9 Effect of adoption order
>
> (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock:
>
> Provided that, in any case where two spouses are the adopters, such spouses shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any Court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother, respectively.
>
> (2) Where, at any time after the making of an adoption order, the adopter or the adopted child or any other person dies intestate in respect of any movable or immovable property, that property shall devolve in all respects as if the adopted child were the child of the adopter born in lawful wedlock and were not the child of any other person.

Section 25A Certificate of Birth

(1) In respect of the Certificate of Birth referred to in paragraph 25(2)(b), every adoption order shall contain a direction:

(a) to the Registrar General that the word "adopted", "adopter" or "adoptive" or any word to like effect shall not appear in the Certificate; and

(b) to the natural or adoptive parent or parents, as the case may be, to surrender to the Registrar General the Certificate of Birth of the child issued under the Births and Deaths Registration Act 1957.

(2) Upon receipt of an adoption order, the Registrar General shall, subject to due compliance with paragraph (1)(b) and the payment by the adopter of the prescribed fee, issue a Certificate of Birth in respect of the child in the form set out in the Second Schedule.

(3) Where a certified copy of an entry in the Adopted Children Register had been issued in respect of a child adopted under this Act, the Registrar General shall issue a Certificate of Birth in respect of the child-

(a) upon application being made by the adoptive parent or either of the adoptive parents, or in the event of the adoptive parent or both adoptive parents being dead, by the adopted child, for a Certificate of Birth; and

(b) upon payment of the prescribed fee.

(4) Upon receipt of the Certificate of Birth under subsection (3), the adoptive parent or either of the adoptive parents, or in the event of the adoptive parent or both adoptive parents being dead, the adopted child, shall cause the certified copy of an entry in the Adopted Children Register issued in respect of the adopted child to be surrendered to the Registrar General for cancellation.

(5) The Certificate of Birth issued under this Act pursuant to an adoption order shall replace the Certificate of Birth of the child issued under the Births and Deaths Registration Act 1957, and shall for all purposes be known as the Certificate of Birth of the child.

(6) Notwithstanding anything to the contrary in any written law, the Certificate of Birth under this Act, if given under the hand of the Registrar-General or any person authorised by him, shall be received without further or other proof as evidence of the facts and particulars relating to the birth of the child in respect of whom the Certificate of Birth was issued.

(7) If the Certificate of Birth issued under this Act is lost, damaged or defaced, the adoptive parent or either of the adoptive parents, or in the case of the adoptive parent or both adoptive parents being dead, the adopted child, may apply to the Registrar General or any person authorised by him for a copy of the Certificate of Birth which, when issued, shall be marked with the word "Replacement".

A (8) The Registrar General shall establish and maintain a register to be called the Register of Birth Certificates in which shall be made such entries pertaining to the issuance of a Certificate of Birth under this Act in respect of an adopted child.

(9) Any person may apply in the prescribed form to have a search made
B of the Register of Birth Certificates upon payment of the prescribed fee and to have the result of the search certified in the prescribed form.

[33] From a reading of s. 9 of the Adoption Act 1952, we agree that the section does confer certain rights to and impose certain duties on the adoptive parents. However, those rights that have been conferred on the adopted child
C are specifically spelt out. The conferred rights extend even to inheritance rights of the adopted child in the sense that the adopted child stands in the same position of his other adoptive siblings, as though the adopted child was a child born out of lawful wedlock of the adoptive parents. It would be erroneous to say that as the adopted child is deemed to be a child out of
D lawful wedlock, therefore his adoptive parents are thus his biological parents. And proceeding from there, since they were Malaysian citizens, it must necessarily follow that the adopted child must be a Malaysian citizen, by operation of law, *to wit* art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution. We said that it was erroneous and untenable, for two reasons. First, by deeming the child to be a child born out
E of lawful wedlock would confer on him the status of a legitimate child. But that same deeming provision on being born out of lawful wedlock, does not, with respect, confer on the adoptive parents the status of being the biological parents of the adopted child. Secondly, s. 9(1), with respect, confers rights stated thereunder, prospectively. The rights conferred on the adoptive
F parents operate only upon the granting of the adoption order. It does not operate retrospectively so as to obliterate what had been done in relation to the child before his adoption. The adoptive parents only come into the shoes of the biological parents upon the issuance of the adoption order, at which time, the rights of the biological parents, *in futuro*, over the child are, in law,
G extinguished. The presumed legitimacy must be understood in the context of what was intended in the scheme of things as contained in s. 9(1) of the Adoption Act 1952 which is, among others, to render the adopted child to be on equal footing with his other adoptive siblings, if any. In light of that, the adoptive parents can never fulfil the critical ingredient
H in the Federal Constitution that requires the person to prove that his "parents one at least is at the time of the birth either a citizen or permanently resident in the Federation;", namely that of biological parents. That is because it is a factual impossibility, as any adoption comes only after the birth, not at the time of the birth.

I **[34]** We also note that these rights are 'deemed' rights conferred by the said Act of Parliament that is the Adoption Act 1952. That was having been said that, these rights as conferred by s. 9 of the Adoption Act 1952 are statutory rights. They are not rights conferred by the Federal Constitution as such. In

fact, s. 9 of the Adoption Act 1952 does not say anything pertaining to the citizenship status of the adopted child, upon adoption having duly been approved.

[35] As regards s. 25A of the Adoption Act 1952, at first blush, sub-ss. (5) and (6) therein, do seem to suggest and thus support the proposition advanced by the respondents that the adopted child ought to be given automatic citizenship of the adoptive Malaysian parents, by operation of law. The language that was employed in those two sub-sections would appear to convey an interpretation of wide import. But again, it must be remembered that these provisions are contained in the Adoption Act 1952, which are specifically drafted to cater for the lawful adoption of children. It does not escape our notice as well, that in the referred to provisions of the Adoption Act 1952, no mention was made to the issue pertaining to the citizenship status of the adopted child. The effect to be given to those provisions contained in sub-ss. (5) and (6) to s. 25A must be confined to the ambit of its operability. To our minds, they are not intended to extend into the realm of the Federal Constitution in matters pertaining to citizenship.

[36] To our minds, with respect, the omission to refer to citizenship under s. 9 of the Adoption Act 1952 was a deliberate one. The provisions on citizenship reside under the Federal Constitution and they represent the accepted regime on citizenship and how it is and/or could be obtained. A reading of the art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of Federal Constitution has yielded the following observations. We are of the view that the phrase 'is at the time of birth' refers to an actual factual event, referring therefore to the actual biological parent, as opposed to a 'deemed' biological parent created solely for the purpose of catering to the needs of the adopted child within the context of the Adoption Act 1952. We say so because, if the Federal Constitution had intended that an adopted child to a non-Malaysian citizen or a permanent resident of Malaysia, be conferred as a Malaysian citizen upon successful adoption, such provision would have been expressly stipulated in the Federal Constitution itself. The Adoption Act 1952, being a subsidiary legislation *qua* the Federal Constitution, cannot be interpreted in such a way as to augment what appears to be a perceived lacuna in the Federal Constitution. "The ultimate touchstone of constitutionality is the Constitution itself and not any general principle outside it." per Raja Azlan Shah FJ (as His Highness then was) in *Loh Kooi Choon v. Government of Malaysia* [1975] 1 LNS 90; [1977] 2 MLJ 187.

[37] Although sub-s. (6) to s. 25A of the Adoption Act is couched with the following phrase, "notwithstanding anything contained in any other written law ..." such assertion, with respect, does not exclude the omnipresent and omnipotent of the Federal Constitution. No written law can override nor supersede the Federal Constitution. Article 4(1) of the Federal Constitution expressly declares that any provision in any statute that in inconsistent with the Federal Constitution shall, to the extent of its inconsistency, be void and be of no effect.

[38] So the Adoption Act 1952, could not even pretend to confer citizenship to an adopted child upon successful issue of the adoption order from which the current birth certificate of the child was issued by the appellant.

[39] Put simply, the Adoption Act 1952 is not competent as a legal instrument to confer citizenship status to an adopted child under art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of Federal Constitution. The fact that it is silent on that subject must be telling. Indeed, it would be futile to insert such a provision in the Adoption Act 1952. If it was the intention of the Federal Constitution to include an adoptive parent as a biological parent (parent whose at least one is at the time of the birth) for the purpose of art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of Federal Constitution, such intention would have found clear expression in the Federal Constitution itself, because to interpret an adoptive parent in the definition of a biological parent would have huge implications. To reiterate, we could not find such express stipulation in the Federal Constitution and neither could learned SFC nor Mr Raymond Mah, to that effect. In the circumstances, it would indeed be wrong for us to read into the Federal Constitution something which is conspicuously not there. We are therefore in agreement with the learned SFC on this score.

[40] Two of the panel members of this court which had heard and dismissed the appeal by the appellant in the *CKN*'s case *(supra)*, namely my learned brother, Dato Zamani A Rahim and my learned sister, Puan Sri Zaleha Yusof, are of the view that nothing which they had heard in the oral, as well as in the written submissions by Mr Raymond Mah before us, had persuaded them to depart from their decision in the *CKN* appeal case. Having had the advantage of perusing the judgment of the learned JC in the *CKN*'s case *(supra)* which had been affirmed by this court on appeal, I, too have no reason to disagree with them. We can find no cogent reasons as to why we ought to depart from it. We are unanimous in our view that an adoption order issued under the Adoption Act 1952 does not confer Malaysian citizenship to an adopted child although one of his adoptive parents is a Malaysian citizen or a person permanently resident in Malaysia by operation of law, within the contemplation and ambit of art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution. To be a Malaysian citizen by operation of law under the provisions of art. 14(1)(b) read with s. (1)(a) Part II, Second Schedule of the Federal Constitution, the person must be born in Malaysia and one of his biological parents is at the time of his birth, either a Malaysian citizen or a person who is permanently resident in Malaysia. In this appeal before us, the applicants did not fulfil the crucial biological, or the *jus sanguinis*, criterion as envisaged under the said article.

[41] Lest we forget, it was also argued before us that the respondents had not exhausted his avenue for redress. In the case of *Robin Tan Pang Heng v. Ketua Pengarah Kesatuan Sekerja Malaysia & Anor* [2010] 9 CLJ 505 it was held by the apex court that an applicant seeking discretionary reliefs, including for *certiorari* and *mandamus*, must first exhaust all avenues open to him before running to the court for such reliefs. Learned Justice Heliliah Mohd Yusof FCJ held that:

> [22] … the appellant requested the High Court to invoke its residual powers and as succinctly stated by Sir John Donaldson MR in *R v. Epping and Harlow General Commissioner* [1983] 3 All ER 257:
>
> > But it is a cardinal principle that, save in the most exceptional circumstances, that jurisdiction will not be exercised where other remedies were available and have not been used.
>
> [23] Even if the process invoked here had indeed been the process of judicial review in the true sense, this court will only be exercising a supervisory and not an appellate function. Lord Templeman in his speech in *In Re Preston* [1985] 1 AC 835 observed:
>
> > Judicial review process should not be allowed to supplant the normal statutory appeal procedure.

[42] In this case, the respondents could still apply to be a citizen by applying an invocation of art. 15A of the Federal Constitution, namely application for citizenship by way of registration for consideration by the Minister. We noted too that he had written to respondents on that avenue but that the request was turned away without it being considered by the Honourable Minister. That would mean that his request had not been subject to the Honourable Minister's consideration. In other words, he had not exhausted his available avenue for redress. That avenue is still available for him to explore.

Conclusion

[43] In the upshot therefore, we allow this appeal. As a result, the whole decision of the learned High Court Judge dated 1 March 2016 is set aside accordingly. We make no order as to costs.